

# MINIMUM WAGE ENFORCEMENT: THE UNFINISHED BUSINESS OF FLORIDA'S CONSTITUTIONAL AMENDMENT

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## Abstract

Prior to 2004, Florida was one of seven states without its own minimum wage. In 2004, state voters overwhelmingly passed a ballot initiative that enshrined the right to a state minimum wage in Florida's Constitution. In 2020, voters passed a second ballot initiative that gradually raises Florida's minimum wage to \$15 per hour. Despite bipartisan voter support, the Authors found that since 2004, the State has taken no formal actions to enforce Florida's minimum wage law. Further, the Authors' analysis of U.S. Census data demonstrated that amid the failure of State enforcement, minimum wage violations rose

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dramatically, disproportionately impacting women, Black, Latinx, and immigrant workers. Likewise, of the industries with the highest violation rates, five of the top six are key to Florida’s economy. The Authors argue that Floridian workers need a state department of labor to fully realize the promise of Florida’s constitutional right to the minimum wage.

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INTRODUCTION<sup>1</sup>

In November 2020, Floridians made the historic decision to move an estimated 2.5 million workers closer to a living wage with the passage of Amendment 2, which raised the state minimum wage to \$10 per hour in

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1. For an explanation of the methodology used by the Authors for statistical analysis in this Article, see ALEXIS TSOUKALAS ET AL., FLA. POL’Y INST., RUTGERS UNIV., FLORIDA POLICYMAKERS NEED TO REASSESS HOW THE MINIMUM WAGE IS ENFORCED 9–12 (Mar. 2021), [https://uploads-ssl.webflow.com/5cd5801dfdf7e5927800fb7f/632fb6e3d183d2079669024e\\_RT\\_Wage\\_Theft\\_FINAL.pdf](https://uploads-ssl.webflow.com/5cd5801dfdf7e5927800fb7f/632fb6e3d183d2079669024e_RT_Wage_Theft_FINAL.pdf).

2021 and will increase it by one dollar annually until it reaches \$15 per hour in 2026.<sup>2</sup> The first phase of Florida’s minimum wage increase went into effect in September 2021, increasing from \$8.65 to \$10 per hour.<sup>3</sup> Prior analysis by one of the Authors shows Amendment 2 is expected to significantly raise pay for more than one in four Florida workers and help bring over one million households out of poverty. These benefits will be especially beneficial for women, Black and Latinx Floridians, and immigrants, reducing longstanding pay inequities. Amendment 2 will also bring many essential employees and service workers closer to a living wage and boost their spending power throughout local communities.<sup>4</sup>

In light of Amendment 2, the Authors assessed the extent to which the state minimum wage has been enforced in recent years, as well as wage theft’s impact on workers and the broader state economy. Failing to pay the mandated minimum wage is but one of many forms of wage theft.<sup>5</sup> However, given the recent passage of Amendment 2 and Florida’s unnerving distinction as the state with the highest minimum wage violation rate in the U.S.,<sup>6</sup> “wage theft” for this Article will refer solely to minimum wage violations. The Authors analyzed over fifteen years of U.S. Census data and records obtained from the Florida Attorney General’s Office, finding, as have earlier research studies,<sup>7</sup> that the state has largely abandoned responsibility to enforce its constitutionally-mandated minimum wage.<sup>8</sup> The Authors complement these findings with historical context regarding efforts to raise Florida’s minimum wage and

2. ALEXIS P. TSOUKALAS, FLA. POL’Y INST., A MINIMUM WAGE BOOST WOULD IMPROVE EQUITY FOR 2.5 MILLION FLORIDIANS AND BOLSTER THE STATE’S POST-PANDEMIC RECOVERY 2 (Sept. 2020), [https://uploads-ssl.webflow.com/5cd5801dfdf7e5927800fb7f/5f8649e89a8f5af9ed28cec2\\_RT\\_Min\\_Wage\\_FINAL.pdf](https://uploads-ssl.webflow.com/5cd5801dfdf7e5927800fb7f/5f8649e89a8f5af9ed28cec2_RT_Min_Wage_FINAL.pdf) [<https://perma.cc/969T-UQ4C>].

3. *Consolidated Minimum Wage Table*, U.S. DEP’T LAB. (Aug. 30, 2022), <https://www.dol.gov/agencies/whd/mw-consolidated> [<https://perma.cc/5PNT-3WWY>]; Jake Stofan, *Florida’s Minimum Wage Increases to \$10 Per Hour Thursday*, NEWS4JAX (Sept. 29, 2021, 6:05 PM), <https://www.news4jax.com/news/local/2021/09/29/floridas-minimum-wage-increases-to-10-per-hour-thursday/> [<https://perma.cc/58GQ-VX6E>].

4. TSOUKALAS, *supra* note 2, at 4.

5. Daniel J. Galvin, *Detering Wage Theft: Alt-Labor, State Politics, and the Policy Determinants of Minimum Wage Compliance*, 14 PERSPS. ON POL. 324, 325 (2016).

6. DAVID COOPER & TERESA KROEGER, ECON. POL’Y INST., EMPLOYERS STEAL BILLIONS FROM WORKERS’ PAYCHECKS EACH YEAR 11 (May 10, 2017), <https://files.epi.org/pdf/125116.pdf> [<https://perma.cc/7Q2L-WYRU>].

7. CYNTHIA S. HERNANDEZ & CAROL STEPICK, WAGE THEFT: HOW MILLIONS OF DOLLARS ARE STOLEN FROM FLORIDA’S WORKFORCE *passim* (Jan. 26, 2012), [https://riseup.fiu.edu/research-publications/workers-rights-econ-justice/wage-theft/2012/wage-theft-how-millions-of-dollars-are-stolen-from-floridas-workforce/wage-theft\\_how-millions-of-dollars-are-stolen-from-floridas-workforce\\_finaldocx1.pdf](https://riseup.fiu.edu/research-publications/workers-rights-econ-justice/wage-theft/2012/wage-theft-how-millions-of-dollars-are-stolen-from-floridas-workforce/wage-theft_how-millions-of-dollars-are-stolen-from-floridas-workforce_finaldocx1.pdf) [<https://perma.cc/X2M5-VJ7R>].

8. Marianne Levine, *Behind the Minimum Wage Fight, A Sweeping Failure to Enforce the Law*, POLITICO (Feb. 18, 2018, 10:40 AM), <https://www.politico.com/story/2018/02/18/minimum-wage-not-enforced-investigation-409644> [<https://perma.cc/K2AL-VDQ2>].

the state's limited—and contested—wage enforcement infrastructure. Policy recommendations for more robust state-level minimum wage enforcement—including the re-establishment of a state department of labor—are offered.

## I. MINIMUM WAGE AND THE NEW FEDERALISM

As defined by the Fair Labor Standards Act (FLSA), minimum wage is a basic labor standard meant to provide a “minimum standard of living necessary for health, efficiency, and general well-being of workers.”<sup>9</sup> Thus, minimum wage laws define the lowest rate employers can pay and in turn protect workers from exploitatively low wages. Though minimum wage laws are most directly a critical tool for increasing wages and promoting economic stability for low-income workers across the labor market, the significance of such laws goes beyond simply lifting the wage floor.<sup>10</sup> Research indicates that minimum wage laws can reduce the racial earnings divide,<sup>11</sup> which is now more prominent than in 1979.<sup>12</sup>

In 2007, Congress amended the FLSA to raise the federal minimum hourly wage in three increments.<sup>13</sup> Under the amendment, known as the Fair Minimum Wage Act, the federal minimum wage increased from \$5.15 to \$5.85 in 2007, to \$6.55 in 2008, and to \$7.25 in 2009.<sup>14</sup> Since former President George W. Bush signed the last minimum wage increase into law, federal dysfunction has resulted in the most prolonged period in history without a raise.<sup>15</sup> As of this writing, it has been more than twelve

9. Fair Labor Standards Act of 1938, 29 U.S.C. § 202(a).

10. Arindrajit Dube et al., *The Economic Effects of a Citywide Minimum Wage*, 60 INDUS. & LAB REL. REV. 522 *passim* (2007).

11. Ellora Derenoncourt & Claire Montialoux, *Minimum Wages and Racial Inequality*, 136 Q. J. ECON. 169, 169 (2021).

12. Elise Gould, *Racial Gap in Wages, Wealth, and More*, ECON. POL'Y INST. (Jan. 26, 2017, 11:15 AM), <https://www.epi.org/blog/racial-gaps-in-wages-wealth-and-more-a-quick-recap/> [<https://perma.cc/88CU-5NGE>]; Ellora Derenoncourt et al., *Why Minimum Wages Are a Critical Tool for Achieving Racial Justice in the U.S. Labor Market*, WASH. CTR. FOR EQUITABLE GROWTH (Oct. 29, 2020), <https://equitablegrowth.org/why-minimum-wages-are-a-critical-tool-for-achieving-racial-justice-in-the-u-s-labor-market/> [<https://perma.cc/68YV-TPBB>].

13. Fair Minimum Wage Act of 2007, 29 U.S.C. § 206(A)(1).

14. Notably, the minimum wage increases applied only to non-tipped workers. The federal hourly minimum wage rate for tipped workers is \$2.13 per hour as long as the employee receives a combination of wages and tips that amount to at least \$7.25 per hour. *Id.* § 203(m). The hourly minimum wage for tipped workers has not been increased since 1991. See Sylvia Allegretto & David Cooper, *Twenty-Three Years and Still Waiting for Change*, ECON. POL'Y INST. (July 10, 2014), <https://www.epi.org/publication/waiting-for-change-tipped-minimum-wage/#:~:text=The%20subminimum%20wage%20for%20tipped%20workers%20has%20remained%20at%20%242.13,regular%20minimum%20wage%20was%20increased> [<https://perma.cc/K6X3-M2ME>].

15. This is not the first time that partisanship has interfered with the federal minimum wage. Years of bipartisan support for minimum wage came to an end during the Reagan Administration. Although abolishing the Fair Labor Standards Act was not politically feasible, the blocking of any increase in the minimum wage during the eight years of Reagan's presidency

years since the last minimum wage increase.<sup>16</sup> The federal minimum wage remains at \$7.25 per hour.<sup>17</sup> Significantly, though the minimum wage has stagnated since 2009, inflation has not. When adjusted for inflation, a minimum wage worker in 2022 earns 27% less than their 2009 peers, when adjusted for inflation based on the Consumer Price Index (CPI). By comparison, a minimum wage worker in 1968 earned \$12.12 per hour in 2022 dollars.<sup>18</sup> Moreover, Economic Policy Institute estimates that if the minimum wage had tracked productivity increases over the last fifty years, it would currently be higher than \$22 per hour.<sup>19</sup>

In the face of federal gridlock, thirty states, Washington, D.C., and forty-six municipalities have enacted laws to increase their minimum wages above the federal level.<sup>20</sup> Predictably, this bottom-up minimum wage boom has been constrained by regional disparities. Southern lawmakers in particular have refused to pass minimum wage increases. Of the twenty states with a minimum wage less than or equal to the federal minimum, ten are in the South.<sup>21</sup> Strikingly, the legal wage floor for approximately 63% of states in the South is \$7.25 per hour.<sup>22</sup> By comparison, just 22% of the states in the Northeast (excluding Puerto Rico and the U.S. Virgin Islands), 23% in the West (excluding Guam), and 42% in the Midwest have a minimum wage less than or equal to \$7.25 per hour.<sup>23</sup>

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led to a dramatic erosion of purchasing power. See Jennifer Graham, *From Reagan to Romney, A Brief History of Republican Thinking on the Minimum Wage*, DESERET NEWS (Feb. 26, 2021, 12:00 AM), <https://www.deseret.com/indepth/2021/2/25/22297995/reagan-to-mitt-romney-a-brief-history-of-republican-thinking-on-the-minimum-wage-milton-friedman> [<https://perma.cc/5UWU-KQEC>].

16. *History of Changes to the Minimum Wage Law*, U.S. DEPT. LAB. (Sept. 1, 2011), <https://www.dol.gov/agencies/whd/minimum-wage/history> [<https://perma.cc/4TTP-J39D>].

17. *Id.*

18. David Cooper et al., *The Value of the Federal Minimum Wage Is at Its Lowest Point in 66 Years*, ECON. POL'Y INST. (July 14, 2022, 3:39 PM), <https://www.epi.org/blog/the-value-of-the-federal-minimum-wage-is-at-its-lowest-point-in-66-years/>.

19. DAVID COOPER ET AL., ECON. POL'Y INST., RAISING THE FEDERAL MINIMUM WAGE TO \$15 BY 2025 WOULD LIFT THE PAY OF 32 MILLION WORKERS 1 (Mar. 9, 2021), <https://files.epi.org/pdf/221010.pdf> [<https://perma.cc/DB2K-3VKB>].

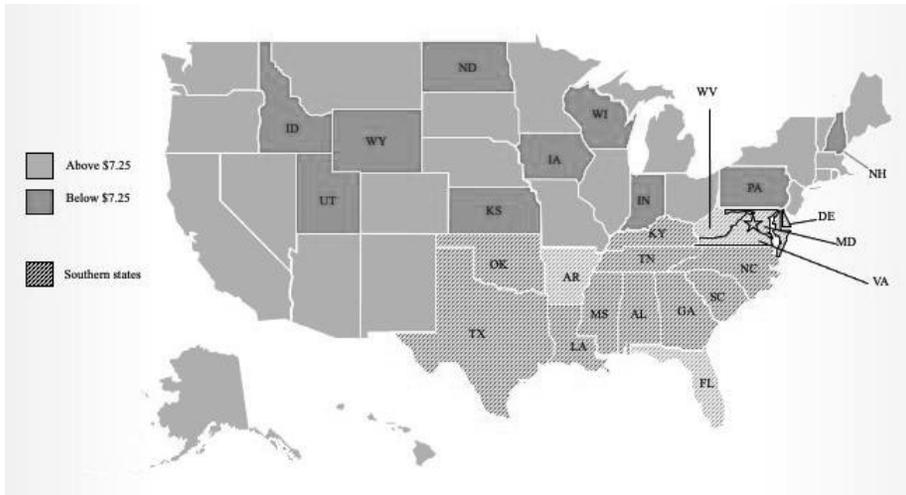
20. *Minimum Wage Tracker*, ECON. POL'Y INST., [https://www.epi.org/minimum-wage-tracker/#/min\\_wage/](https://www.epi.org/minimum-wage-tracker/#/min_wage/) [<https://perma.cc/7956-FA33>] (last updated July 1, 2022); see *infra* Figure 1.

21. *Minimum Wage Tracker*, *supra* note 20; see *infra* Figure 1. “South” as used throughout this Article is defined by the South Census Region. See *Southeast Information Office*, U.S. BUREAU LAB. STAT., <https://www.bls.gov/regions/southeast/south.htm> [<https://perma.cc/X8YD-9A9D>] (last visited Sept. 13, 2022).

22. *State Minimum Wage Laws*, U.S. DEP'T OF LAB., <https://www.dol.gov/agencies/whd/minimum-wage/state> [<https://perma.cc/P23E-8P5C>] (last updated July 1, 2022); see *infra* Figure 1.

23. *State Minimum Wage Laws*, *supra* note 22; see *Geographic Information*, U.S. BUREAU LAB. STAT., <https://www.bls.gov/regions/home.htm> [<https://perma.cc/RD6Y-9MC6>] (illustrating

Figure 1: State Minimum Wages Relative to the Federal Minimum Wage (\$7.25)<sup>24</sup>



## II. THE SURPRISING HISTORY OF FLORIDA'S MINIMUM WAGE

As Figure 1 shows, Florida is a notable exception to Southern states' subpar minimum wage rates in multiple respects. For one, while most states with a minimum wage created the requirement by statute,<sup>25</sup> Florida is one of just four states in the U.S.—and the only state in the South—to enshrine the right to a minimum wage in its constitution.<sup>26</sup> The means through which Floridian workers gained the constitutional right to a higher state minimum wage is likewise significant. In the face of state lawmakers' partisan entrenchment, Florida voters bypassed the

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the Northeast, West, and Midwest geographic boundaries of the United States by census region); see *infra* Figure 1. These statistics apply to states' non-tipped workers' minimum wages. Of the states in the West, Northeast, and Midwest with a non-tipped minimum wage of \$7.25, only Wisconsin, Pennsylvania, Idaho, Iowa, North Dakota, and New Hampshire have a minimum wage for tipped workers that is higher than the federal tipped rate of \$2.13 per hour. *Minimum Wage Tracker*, *supra* note 19. However, none of these states tipped minimum wage rates exceed \$5.00 per hour. *Id.*; *Tipped Minimum Wage Laws by State 2022*, MINIMUM-WAGE.ORG, <https://www.minimum-wage.org/tipped> [<https://perma.cc/9N9G-WVVL>] (last visited Sept. 13, 2022).

24. *Minimum Wage Tracker*, *supra* note 20.

25. See Rosalind Dixon & Julie Suk, *Liberal Constitutionalism and Economic Inequality*, 85 U. CHI. L. REV. 369, 374–76 (2018) (noting that beyond the United States, most liberal democracies pass measures to confront poverty and economic inequality through statutory and regulatory means, not through constitutional amendments).

26. FLA. CONST. art. X, § 24. Colorado, Ohio, and New Jersey are the other three states with minimum wage rights in their constitutions. COLO. CONST. art. XVIII, § 15; OHIO CONST. art. II, § 34a; N.J. CONST. art. I, ¶ 23; CONG. RSCH. SERV., *STATE MINIMUM WAGES: AN OVERVIEW* 17–31 (Sept. 2, 2022), <https://sgp.fas.org/crs/misc/R43792.pdf> [<https://perma.cc/EMZ7-JXLA>].

legislature and amended the state's constitution directly through the ballot initiative process<sup>27</sup> in 2004 with the passage of Amendment 5 and in 2020 with Amendment 2.<sup>28</sup> In a demonstration of strong bipartisan support for a \$15 minimum wage,<sup>29</sup> 61% of Florida voters passed Amendment 2, significantly exceeding the margin of victory of any presidential candidate in the 2020 General Election.<sup>30</sup> As a result, Florida assumed the mantle of the state with the highest minimum wage rate passed via ballot initiative<sup>31</sup> and the only state in the United States with a constitutional right to a \$15 minimum wage.<sup>32</sup>

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27. A direct ballot initiative starts with the collection of signatures on a petition. If a sufficient number of signatures are collected, the initiative is put on the ballot for voters to accept or reject without the involvement of the legislature. By contrast, some states have an indirect initiative process which requires a minimum number of signatures. Once achieved, the initiative is sent for legislative consideration before it is allowed on the ballot. Further, while Florida only allows for direct constitutional initiatives, direct and indirect initiatives for statutory reform are available in twenty-three states. See Marvin Krislov & Daniel M. Katz, *Taking State Constitutions Seriously*, 17 CORNELL J.L. & PUB. POL'Y 295, 303 (2008). For a thorough discussion of state constitutions as a vital yet neglected tool for countering antidemocratic behavior, including political entrenchment, see Jessica Bulman-Pozen & Miriam Seifter, *The Democracy Principle in State Constitutions*, 119 MICH. L. REV. 859 (2021).

28. *Florida Minimum Wage, Amendment 5 (2004)*, BALLOTPEDIA, [https://ballotpedia.org/Florida\\_Minimum\\_Wage\\_Amendment\\_5\\_\(2004\)](https://ballotpedia.org/Florida_Minimum_Wage_Amendment_5_(2004)) [<https://perma.cc/88CL-DTBN>] (last visited Sept. 16, 2022); *Florida Amendment 2, \$15 Minimum Wage Initiative (2020)*, BALLOTPEDIA, [https://ballotpedia.org/Florida\\_Amendment\\_2,\\_\\$15\\_Minimum\\_Wage\\_Initiative\\_\(2020\)](https://ballotpedia.org/Florida_Amendment_2,_$15_Minimum_Wage_Initiative_(2020)) [<https://perma.cc/V3HX-BT87>] (last visited Sept. 16, 2022). Florida is one of 16 states that allow for constitutional amendments through direct constitutional initiatives. ARIZ. CONST. art. XXI, § 1; ARK. CONST. amend. VII; CAL. CONST. art. II, §§ 8, 10; *id.* art. XVIII, § 3; COLO. CONST. art. V, § 1; FLA. CONST. art. XI, §§ 3, 5; ILL. CONST. art. XIV, § 3; MICH. CONST. art. XII, § 2; MO. CONST. art. III, §§ 50, 51; MONT. CONST. art. XIV, § 9; NEB. CONST. art. III, §§ 2, 4; NEV. CONST. art. XIX, §§ 2, 4; N.D. CONST. art. III, §§ 1–10; OHIO CONST. art. II, §§ 1a, 1b; OKLA. CONST. art. V, §§ 2, 3; OR. CONST. art. IV, §§ 2–4; S.D. CONST. art. XXIII, §§ 1, 3.

29. Recent research demonstrates that a majority of voters across the United States support a \$15 per hour minimum wage. See, e.g., Leslie Davis & Hannah Hartig, *Two-Thirds of Americans Favor Raising Federal Minimum Wage to \$15 an Hour*, PEW RSCH. CTR. (July 30, 2019), <https://www.pewresearch.org/fact-tank/2019/07/30/two-thirds-of-americans-favor-raising-federal-minimum-wage-to-15-an-hour/> [<https://perma.cc/VQ37-NFC8>].

30. Specifically, Amendment 2 passed with more than 60% voter approval while former President Donald Trump won Florida with only 51.2%. See Fla. Dep't State, *Election Results*, <https://results.elections.myflorida.com/Index.asp> [<https://perma.cc/79FX-Y6CX>] (last visited Sept. 16, 2022).

31. CONG. RSCH. SERV., STATE MINIMUM WAGE BALLOT MEASURES: IN BRIEF 2–5 (Jan. 28, 2021), <https://crsreports.congress.gov/product/pdf/R/R44706/6> [<https://perma.cc/7FBH-VH7U>]. Prior to Florida's passage of Amendment 2, \$13.50 per hour was the highest minimum wage enacted by a ballot initiative, which was passed by Washington State voters in 2016. *Id.* at 5.

32. CONG. RSCH. SERV., *supra* note 26. Note, however, that New Jersey's 2013 constitutional amendment creating Article I, Paragraph 23, requires employers pay \$8.25 per hour or the rate under the New Jersey Wage and Hour Law, N.J. STAT. ANN. § 34:11-56a4 (West 2022), whichever is greater. N.J. CONST. art. I, ¶ 23. Per 2019 amendments to New Jersey's Wage and Hour Law, the state's minimum wage will increase to \$15 per hour by 2024. N.J. STAT. ANN.

### A. Amendment 5 (2004)

Before 2004, Florida was one of only seven states without its own minimum wage.<sup>33</sup> The state legislature had repeatedly refused to set one and even went a step further in 2003 by passing a law that preempted localities from implementing their own wage ordinances.<sup>34</sup> In light of this intransigence, advocates decided to push for a constitutional amendment put directly to voters. In 2004, the Florida Minimum Wage Amendment made it onto the November ballot and passed overwhelmingly.<sup>35</sup> Amendment 5 amended the Florida Constitution to include a state minimum wage of \$6.15 (\$3.15 for tipped workers), \$1 over the then-existing federal minimum wage, which had remained unchanged at the time for seven years.<sup>36</sup> Amendment 5 set Florida apart from other Southern states, which had—and still have—much lower minimum wage rates.<sup>37</sup> Moreover, Amendment 5 mandated that the state minimum wage be automatically indexed to inflation each year, using the consumer price index for urban wage earners and clerical workers (CPI-W) or a subsequent index determined by the Department of Labor.<sup>38</sup>

The initial push for a state minimum wage coalesced under Floridians for All, a coalition led by the Association of Community Organizations for Reform Now (ACORN), with support from numerous state and national progressive groups and labor unions, including MoveOn, America Coming Together, and the Service Employees International Union (SEIU). The campaign began after state polling in 2003 showed strong support for a higher state minimum wage, particularly among people of color and those earning low wages.<sup>39</sup> Considering this polling, ACORN saw a real possibility of winning the state minimum wage

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§ 34:11-56a4a. (West 2022). Thus, the New Jersey Constitution technically requires a \$15 per hour minimum wage. Of course, the \$15 minimum wage is not directly mentioned in the state constitution but is indirectly referenced by statute. *Id.*

33. *Groups Launch Ballot Initiative to Raise Florida Minimum Wage*, BRENNAN CTR. FOR JUST. (Aug. 7, 2003), <https://www.brennancenter.org/our-work/analysis-opinion/groups-launch-ballot-initiative-raise-florida-minimum-wage> [<https://perma.cc/8U6A-3DNU>].

34. FLA. STAT. ANN. § 218.077(2) (West 2022).

35. *Florida Minimum Wage, Amendment 5 (2004)*, *supra* note 28; *Florida Minimum Wage Amendment 03-29*, FLA. DIV. ELECTIONS, <https://dos.elections.myflorida.com/initiatives/initdetail.asp?account=37732&seqnum=1> [<https://perma.cc/M7BJ-A9BL>] (last visited Sept. 16, 2022).

36. *History of Federal Minimum Wage Rates Under the Fair Labor Standards Act, 1938-2009*, U.S. DEP'T LAB., <https://www.dol.gov/agencies/whd/minimum-wage/history/chart> [<https://perma.cc/CL83-V9HA>] (last visited Sept. 16, 2022).

37. *See supra* Figure 1.

38. *Florida Minimum Wage, Amendment 5 (2004)*, *supra* note 28; *Florida Minimum Wage Amendment 03-29*, *supra* note 35.

39. John Atlas, *In Red State Florida, Victory for Working People*, SHELTERFORCE (Jan. 1, 2005), <https://shelterforce.org/2005/01/01/in-red-state-florida-victory-for-working-people/> [<https://perma.cc/B3MP-WMMR>].

fight.<sup>40</sup> ACORN also viewed placing minimum wage on the ballot as a strategy for encouraging disengaged Black and Latinx Floridians to vote, hoping that their turnout would swing votes in the 2004 Presidential Election away from Republican George W. Bush and toward the then-unnamed Democratic candidate (later, John Kerry).<sup>41</sup>

The Coalition to Save Florida Jobs, a committee of business leaders, led the opposition to Amendment 5.<sup>42</sup> The Coalition worked to convince the public that Amendment 5 was harmful to Florida businesses and workers.<sup>43</sup> The Coalition mobilized hundreds of donors and powerful pro-business lobbyists, including the Florida Restaurant Association, Florida Chamber of Commerce, Florida Retail Federation, and large corporations like Publix Supermarkets, Walt Disney World, Burger King, and Walgreens.<sup>44</sup> While the strategy to turn out infrequent voters failed (Florida voted for George W. Bush by a narrow margin),<sup>45</sup> the push to establish a state minimum wage succeeded. On November 2, 2004, Amendment 5 became law when about 5.2 million Floridians voted to pass Amendment 5 while around 2.1 million Floridians opposed it.<sup>46</sup>

### B. Amendment 2 (2020)

In the sixteen years between the passage of Amendment 5 in 2004 and Amendment 2 in 2020, the only increases to Florida's minimum wage were annual adjustments to keep pace with inflation.<sup>47</sup> Without a meaningful boost to the state minimum wage, efforts were made during this period to enact local minimum wage laws. Specifically, in 2016,

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40. *Id.*

41. *Id.*

42. *Id.*

43. Christine Selvaggi Baumann, *Restaurant, Retail Industries Oppose Minimum Wage Amendment*, JACKSONVILLE BUS. J. (Sept. 23, 2004), <https://www.bizjournals.com/jacksonville/stories/2004/09/20/daily30.html> [<https://perma.cc/MSK2-MRPN>].

44. *Florida Minimum Wage, Amendment 5 (2004)*, *supra* note 28.

45. Atlas, *supra* note 39.

46. *Florida Minimum Wage Amendment 03-29*, *supra* note 35.

47. FLA. DEP'T ECON. OPPORTUNITY, FLORIDA MINIMUM WAGE HISTORY: 2000 TO 2019 (Oct. 2018), <https://bit.ly/2EHET47> [<https://perma.cc/ADG5-2GEH>]. In practice, Amendment 5's provision that the wage adopted in 2005 be automatically indexed to the CPI-W each year did not mean that the minimum wage truly increased. *Florida Minimum Wage, Amendment 5 (2004)*, *supra* note 28. Indexing merely "locks the wage in place," so that as inflation increases, the minimum wage has the same buying power as when it was first implemented. Michael Ettlinger, *Securing the Wage Floor*, ECON. POL'Y INST. (Oct. 12, 2006), <https://www.epi.org/publication/bp177/> [<https://perma.cc/3LEZ-7S78>]. For example, in 2012, Florida's minimum wage was \$7.67, which is \$1.52 more than in 2005. FLA. DEP'T ECON. OPPORTUNITY, *supra*. Yet because the 2012 wage was price-indexed, \$7.67 still buys the same amount of goods and services as \$6.15 did in 2005. Ettlinger, *supra*. Therefore, these nominal increases did not appreciably change the standard of living for minimum wage workers; the minimum wage remains far below a living wage. *Id.*

while the state minimum wage hovered at \$8.05,<sup>48</sup> the City of Miami Beach passed a \$10.31 local minimum wage requirement, set to start in 2018 and increase to \$13.31 by 2021.<sup>49</sup> In response, business groups who opposed the statewide minimum wage, like the Florida Chamber of Commerce, sued the City for violating the state statute against setting local wages.<sup>50</sup> The Florida Attorney General publicly supported the business groups' case against the City.<sup>51</sup> Two courts ruled against Miami Beach, striking down the local ordinance, and the Florida Supreme Court refused to hear the appeal in 2019.<sup>52</sup> Amid this political stalemate, Amendment 2, the 2020 minimum wage initiative, emerged.

As with Amendment 5 in 2004, Amendment 2 was on the ballot during a presidential election year and depended significantly on how Florida voted. Unlike 2004, however, the 2020 Election happened during a global pandemic. COVID-19 revealed longstanding inequities while also spotlighting the unique struggles faced by small businesses and nonprofits to stay afloat.<sup>53</sup> Both proponents and opponents of Amendment 2 attempted to leverage the pandemic to publicize their cases.<sup>54</sup>

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48. FLA. DEP'T ECON. OPPORTUNITY, *supra* note 47.

49. Kyle Munzenrieder, *Miami Beach Approves Raising Minimum Wage to \$13.31*, MIAMI NEW TIMES (June 8, 2016, 5:13 PM), <https://www.miaminewtimes.com/news/miami-beach-approves-raising-minimum-wage-to-1331-8511868> [<https://perma.cc/4RMM-UCES5>].

50. Jim Saunders, *Business Groups Fight Higher Miami Beach Minimum Wage*, DAILY COM. (Dec. 15, 2016, 1:01 AM), <https://www.dailycommercial.com/story/news/state/2016/12/15/business-groups-fight-higher-miami-beach-minimum-wage/24252046007/> [<https://perma.cc/8GU9-6UGT>]; FLA. STAT. ANN. § 218.077(2) (West 2022).

51. Joey Flechas, *State of Florida Joins Lawsuit Against Miami Beach's Minimum Wage Law*, TAMPA BAY TIMES (Feb. 2, 2017), <https://www.tampabay.com/state-of-florida-joins-lawsuit-against-miami-beachs-minimum-wage-law/2311898/> [<https://perma.cc/AA6K-5XQW>].

52. Dara Kam, *A Revamped Florida Supreme Court Says No to Miami Beach's Own Minimum Wage Law*, MIAMI HERALD (Feb. 5, 2019), <https://www.miamiherald.com/article/225553350.html>.

53. See Steve Contorno & Helen Freund, *The Push for a \$15 Minimum Wage in Florida Was Winning. Can It Survive COVID-19?*, TAMPA BAY TIMES (Oct. 15, 2020), <https://www.tampabay.com/news/florida-politics/elections/2020/10/15/the-push-for-a-15-mini-mum-wage-in-florida-was-winning-can-it-survive-covid-19/> [<https://perma.cc/4YFC-KCWJ>] (“At a time when American labor has been redefined and essential employees are celebrated as everyday heroes, Florida voters in November will decide whether the value of work should change, too . . . . [T]he coronavirus changed the climate for businesses . . . many of which face uncertain futures. Small companies have closed. Big corporations have laid off thousands of workers. The economic lifeblood of the state, the tourism and hospitality sector, took . . . a hard punch.”).

54. See *id.* (explaining that raising the minimum wage would “permanently shutter many restaurants and hotels,” which were already on “life support” at the time from the pandemic).

Amendment 2 was spearheaded by a wealthy Florida lawyer, John Morgan.<sup>55</sup> The initiative called for gradually increasing the state minimum wage to \$15 per hour, starting at \$10 in September 2021 and increasing by \$1 annually until it reaches \$15 in 2026.<sup>56</sup> After that, the minimum wage would be indexed to inflation.<sup>57</sup> Progressive groups like Florida for \$15 and Southern Poverty Law Center strongly supported Amendment 2.<sup>58</sup> As in 2004, the Coalition to Save Florida Jobs (operating under the name “Save Florida Jobs”) opposed any minimum wage increase, with the Florida Restaurant and Lodging Association and the National Restaurant Association being top donors against Amendment 2.<sup>59</sup> The financial backing of major players like Publix and Walt Disney World was notably absent this time,<sup>60</sup> perhaps because many large employers in Florida were already in the process of raising wages to \$15 per hour.<sup>61</sup> Predictably, state Republican leaders, including Governor Ron DeSantis, publicly opposed Amendment 2, but most Democratic elected officials remained silent.<sup>62</sup>

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55. *Amendment 002*, FOLLOWTHEMONEY.ORG, <https://www.followthemoney.org/entity-details?eid=48643469> [<https://perma.cc/DR3K-YAQ6>] (last visited Sept. 16, 2022); Pete Reinwald, “*Life-Changing*”: John Morgan Lauds Voter Passage of His \$15 Minimum-Wage Initiative, SPECTRUM NEWS (Nov. 4, 2020, 6:11 PM), <https://www.mynews13.com/fl/orlando/news/2020/11/04/john-morgan-amendment-2-florida> [<https://perma.cc/825H-37TV>]; *Florida Amendment 2, \$15 Minimum Wage Initiative (2020)*, *supra* note 28.

56. *Florida Amendment 2, \$15 Minimum Wage Initiative (2020)*, *supra* note 28.

57. *Raising Florida’s Minimum Wage 18–01*, FLA. DIV. ELECTIONS, <https://dos.elections.myflorida.com/initiatives/initdetail.asp?account=70115&seqnum=1> [<https://perma.cc/DQ9W-X86R>] (last visited Sept. 16, 2022).

58. *FAQs*, FLORIDA FOR \$15, <https://www.floridafor15.org/faq> [<https://perma.cc/J6YM-V428>] (last visited Sept. 16, 2022); *SPLC Action Fund: Minimum Wage Increase Will Lift Wages for Millions, Help Get People out of Poverty*, S.L. POVERTY CTR. (Nov. 4, 2020), <https://www.splcenter.org/presscenter/splc-action-fund-minimum-wage-increase-will-lift-wages-millions-help-get-people-out> [<https://perma.cc/SV3Y-B24P>].

59. *Florida Amendment 2, \$15 Minimum Wage Initiative (2020)*, *supra* note 28; Atlas, *supra* note 39.

60. *Florida Amendment 2, \$15 Minimum Wage Initiative (2020)*, *supra* note 28.

61. Lawrence Mower et al., *Florida Voters Passed a Minimum Wage Increase. What Does That Mean?*, TAMPA BAY TIMES (Nov. 4, 2020), <https://www.tampabay.com/news/florida-politics/elections/2020/11/04/florida-voters-passed-a-minimum-wage-increase-what-does-that-mean/> [<https://perma.cc/LVJ6-638Z>].

62. Jim Turner, *Florida GOP Chairman, Incoming House Speaker Oppose Amendment to Increase Minimum Wage*, S. FLA. SUN SENTINEL (Sept. 29, 2020, 1:51 PM), <https://www.sun-sentinel.com/news/politics/elections/fl-ne-top-florida-gop-leaders-oppose-wage-increase-amendment-20200929-jsqj5qewnjj2fei37nuns37ree-story.html> [<https://perma.cc/N7P2-CDZH>]; *DeSantis: ‘Now Is Not the Time’ for Ballot Amendment 2 Raising Florida’s Minimum Wage*, WTXL TALLAHASSEE (Nov. 2, 2020, 7:46 PM), <https://www.wtxl.com/news/election-2020/governor-ron-desantis-against-ballot-amendment-2-raising-floridas-minimum-wage> [<https://perma.cc/93UD-NL98>]; Mary Ellen Klas, *‘Total Systemic Failure’: Florida Democrats Suffer Devastating Election Losses*, TAMPA BAY TIMES (Nov. 4, 2020),

The results of the 2020 Election mirrored the results of the 2004 Election, with the minimum wage amendment succeeding but Florida supporting the Republican candidate for President.<sup>63</sup> Nevertheless, Amendment 2 passed with 6.4 million votes, just over the 60% threshold needed to pass a state ballot measure.<sup>64</sup> This made Florida the eighth state to raise its minimum wage to \$15 per hour, and the first in the South to do so by ballot measure,<sup>65</sup> which signaled major policy implications for the rest of the country.

Bills introduced in the 2021 and 2022 Florida legislative sessions threatened to exclude certain workers from Amendment 2, including young people and the formerly incarcerated.<sup>66</sup> Further, the Florida Congress passed new barriers for donations to citizen ballot initiatives in 2021.<sup>67</sup> Fortunately, a federal judge blocked the donation limit bill,<sup>68</sup> and the two disenfranchisement bills never gained traction. The Florida Legislature ultimately boosted worker pay to \$13 per hour in 2021 for state employees ahead of Amendment 2's phase-in and again increased state employees' pay to \$15 per hour in 2022, demonstrating Florida lawmakers' effort to "get[] out slightly ahead of [the] shift" to \$15 per hour by 2026 for all employees.<sup>69</sup> The first phase of Amendment 2 began in September 2021, raising the state minimum wage to \$10 per hour.<sup>70</sup>

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<https://www.tampabay.com/news/florida-politics/elections/2020/11/04/total-systemic-failure-florida-democrats-suffer-devastating-election-losses/> [<https://perma.cc/JE5R-UNC9>].

63. Zachary Fagenson, *Florida Voters Swing Right to Favor Trump, Left to Favor Wage Hike*, REUTERS (Nov. 5, 2020, 6:07 PM), <https://www.reuters.com/article/us-usa-rights-wages-florida-trfn/florida-voters-swing-right-to-favor-trump-left-to-favor-wage-hike-idUSKBN27L304> [<https://perma.cc/BGH8-BN5B>].

64. *Raising Florida's Minimum Wage 18–01*, *supra* note 57.

65. The seven states that passed minimum wage increases eventually reaching \$15 per hour prior to Florida were California, Connecticut, Illinois, Maryland, Massachusetts, New Jersey, and New York. CAL. LAB. CODE § 1182.12 (West 2022); CONN. GEN. STAT. §§ 31–58 (2022); 820 ILL. COMP. STAT. § 105/4a (2022); MD. CODE ANN., LAB. & EMPL. § 3-413 (West 2022); MASS. GEN. LAWS ch. 151, § 1 (2022); N.J. STAT. ANN. § 34:11-56a4 (West 2022); N.Y. LAB. LAW § 652 (McKinney 2022).

66. S.J. Res. 854, 2021 Leg. (Fla. 2021), <https://www.flsenate.gov/Session/Bill/2021/854> [<https://perma.cc/JF7Z-UY24>]; S.J. Res. 382, 2022 Leg. (Fla. 2022), <https://www.flsenate.gov/Session/Bill/2022/382> [<https://perma.cc/SB52-YUAX>].

67. S.B. 1890, 2021 Leg. (Fla. 2021), <https://www.flsenate.gov/Session/Bill/2021/1890> [<https://perma.cc/NQY8-BDL5>].

68. Renzo Downey, *Federal Judge Blocks Contribution Cap for Ballot Initiatives*, FLA. POL. (July 1, 2021), <https://floridapolitics.com/archives/438733-bill-limiting-donations-to-citizen-initiative-campaigns-put-on-pause/> [<https://perma.cc/PGX3-J4XW>].

69. John Kennedy, *Session Lurches into Overtime as State Worker Pay Raises Approved in Budget Deal*, TALLAHASSEE DEMOCRAT (Mar. 8, 2022), <https://www.tallahassee.com/story/news/politics/2022/03/08/legislative-session-pay-raises-okd-state-workers-florida/9424181002/> [<https://perma.cc/46ZU-QA8V>].

70. Isaac Morgan, *FL Is Set to Boost the Minimum Wage to \$10 an Hour—'A Dramatic Difference' for Low-Wage Workers*, FLA. PHOENIX (Sept. 1, 2021, 7:00 AM),

### III. ENFORCING THE MINIMUM WAGE: THE U.S. WAGE AND HOUR DIVISION AND THE DESTRUCTION OF THE FLORIDA DEPARTMENT OF LABOR AND EMPLOYMENT SECURITY

Unfortunately, the enactment of a minimum wage law does not ensure that workers will be paid in accordance with it. Indeed, the failure to pay workers the wages they are legally due—wage theft—is widespread in low-wage jobs and disproportionately impacts women, immigrants, and people of color.<sup>71</sup> Furthermore, minimum wage violations force law-abiding employers to compete with artificially low labor costs and give employers who cheat their workers a competitive advantage while suppressed wages weaken consumer demand.<sup>72</sup> Unsurprisingly, wage theft also increases the percentage of workers living in poverty and the need for public assistance programs.<sup>73</sup> Thus, robust public enforcement of minimum wage laws is essential for ensuring employer compliance, advancing economic and racial justice, and eliminating unfair competition, especially in low-wage industries.

The U.S. Department of Labor's Wage and Hour Division (WHD) is only empowered to enforce the federal minimum wage.<sup>74</sup> Thus, where a state has a minimum wage that exceeds the federal rate, WHD can only recover up to \$7.25 per hour owed to aggrieved workers, leaving the difference between the state and federal minimum wage rates in the pocket of the offending employer.<sup>75</sup> A state mechanism similar to WHD is needed to enforce the higher minimum wage in Florida and ensure compliance with the state law. Such a mechanism often takes the form of an administrative labor standards enforcement agency, usually housed in a state department of labor.

In addition to being authorized to fully recover back pay due to violations of federal minimum wage rates, state labor standards enforcement agencies offer enforcement capacity beyond what is

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<https://floridaphoenix.com/2021/09/01/fl-is-set-to-boost-the-minimum-wage-to-10-an-hour-a-dramatic-difference-for-low-wage-workers/> [<https://perma.cc/6L7Q-YDDQ>].

71. Annette Bernhardt et al., *Employers Gone Rogue: Explaining Industry Variation in Violations of Workplace Laws*, 66 IND. & LAB. REL. REV. 808, 817–18 (2013); COOPER & KROEGER, *supra* note 6, at 16; Janice Fine et al., *Maintaining Effective U.S. Labor Standards Enforcement Through the Coronavirus Recession*, WASH. CTR. FOR EQUITABLE GROWTH (Sept. 3, 2020), <https://equitablegrowth.org/research-paper/maintaining-effective-u-s-labor-standards-enforcement-through-the-coronavirus-recession/?longform=true> [<https://perma.cc/F7GC-PZSZ>].

72. Janice Fine et al., Wash. Ctr. for Equitable Growth, *Strategic Enforcement and Co-Enforcement of U.S. Labor Standards Are Needed to Protect Workers Through the Coronavirus Recession*, in BOOSTING WAGES FOR U.S. WORKERS IN THE NEW ECONOMY 13, 17 (2021), <https://equitablegrowth.org/wp-content/uploads/2021/01/011421-spitzer-book.pdf> [<https://perma.cc/7L29-BCDV>].

73. COOPER & KROEGER, *supra* note 6, at 8.

74. 29 U.S.C. § 211(a).

75. *Id.*

available at the federal level. Notably, WHD faces a resource deficit that limits its ability to enforce federal wage and hour protections.<sup>76</sup> As of May 1, 2020, WHD employed 779 investigators to protect more than 143 million workers.<sup>77</sup> Accordingly, WHD only has enough resources for roughly one investigator per 183,000 American workers,<sup>78</sup> rendering minuscule the odds that WHD will inspect any given workplace. More than half of the United States' labor standards enforcement capacity rests with states and municipalities.<sup>79</sup>

However, state enforcement capacity is not equitably distributed throughout the country.<sup>80</sup> In line with the regional disparities between state minimum wage rates, differences in state wage enforcement are concentrated regionally, with the South possessing the weakest enforcement capacity in the country.<sup>81</sup> Florida is a notable example. Though Amendment 2 and Amendment 5 positioned Florida to be a minimum wage leader in the South, the state is also a cautionary tale of the failure to enforce it. Despite having one of the highest minimum wages in the South, Florida has the highest minimum wage violation rate of the ten most populous states in the nation.<sup>82</sup> Arguably, this could be

76. COOPER & KROEGER, *supra* note 6, at 5–6.

77. Fine et al., *supra* note 72. The number of investigators WHD employed as of May 2020 is significantly fewer than the 1,000 investigators employed in 1948, when the division was responsible for safeguarding the rights of only 22.6 million workers. *Id.*

78. *Id.*; KATE HAMAJI ET AL., *CTR. POPULAR DEMOCRACY, ECON. POL'Y INST., UNCHECKED CORPORATE POWER: FORCED ARBITRATION, THE ENFORCEMENT CRISIS, AND HOW WORKERS ARE FIGHTING BACK 4* (May 2019), <https://files.epi.org/uploads/Unchecked-Corporate-Power-web.pdf> [<https://perma.cc/Q2L4-BPYA>]; Gretchen Morgenson & Lisa Cavazuti, *The Hidden Scourge of 'Wage Theft': When Higher Profits Come Out of Workers' Pockets*, NBC NEWS (Sept. 6, 2021, 12:00 PM), <https://www.nbcnews.com/business/business-news/hidden-scourge-wage-theft-when-higher-profits-come-out-workers-n1272238> [<https://perma.cc/5TVT-QG7Q>].

79. ZACH SCHILLER & SARAH DECARLO, *POL'Y MATTERS OHIO, INVESTIGATING WAGE THEFT: A SURVEY OF THE STATES passim* (Nov. 2010), <https://www.policymattersohio.org/wp-content/uploads/2011/10/InvestigatingWageTheft20101.pdf> [<https://perma.cc/SP8W-A8CQ>]. Among survey participants, forty-three states and the District of Columbia collectively employ 659.5 investigators who work to enforce wage and hour laws. *Id.* Notably, the survey did not account for enforcement capacity at the local level, which has expanded exponentially in the last decade. Municipalities including San Francisco, Los Angeles, Seattle, Philadelphia, Chicago, and Minneapolis have created and staffed local labor standards enforcement agencies to enforce minimum wage and other worker protection laws. *E.g.*, *Office of Labor Standards Enforcement, SAN FRANCISCO GOV'T*, <https://sfgov.org/olse/> [<https://perma.cc/BLS9-AZQB>] (last visited Sept. 16, 2022). These efforts have significantly increased enforcement capacity at the subnational level.

80. Donald Kerwin, *The US Labor Standards Enforcement System and Low-Wage Immigrants: Recommendations for Legislative and Administrative Reform*, 1 J. MIGRATION & HUM. SEC. 32, 35–37 (2013), <https://journals.sagepub.com/doi/pdf/10.1177/233150241300100103> [<https://perma.cc/P6SP-QDAN>].

81. Galvin, *supra* note 5, at 329–30.

82. COOPER & KROEGER, *supra* note 6.

the result of the state's failure to create an administrative apparatus to enforce wage protections for all Floridian workers.

Until 2002, the State of Florida had its own department of labor, the Department of Labor and Employment Security (DLES).<sup>83</sup> Founded in 1978 as an offshoot of the Florida Department of Commerce (dissolved in 1996), DLES included six programs, a support division, and numerous independent entities under its administrative umbrella.<sup>84</sup> Yet only a narrow subset of DLES's duties and budget were allocated to worker protections, with unemployment insurance, worker's compensation, and workforce development constituting the bulk of its responsibilities.<sup>85</sup> The two DLES divisions most relevant to worker protection were the Division of Administrative Services and the Division of Jobs and Benefits, collectively responsible for mitigating child labor and overseeing migrant work, including the enforcement of wages owed to agricultural workers.<sup>86</sup> This targeted labor focus meant only a small number of workers were entitled to state-level wage protection under DLES. Other Floridians who experienced wage violations could only look to WHD or pursue a civil lawsuit against their employers for redress.

Early in his first term (1999 to 2002), Florida Governor Jeb Bush set his sights on dismantling DLES.<sup>87</sup> The introduction of federal welfare reform in the mid- to late 1990s gave states increased flexibility in administering welfare and employment programs<sup>88</sup> and prompted restructuring of state labor agencies.<sup>89</sup> The popularity of "new public management" as a method for administering government in the early 2000s further laid the groundwork for Florida to restructure DLES. New

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83. FLA. COMM. ON COM., IDENTIFICATION, REV., & RECOMMENDATIONS RELATING TO OBSOLETE STATUTORY REFERENCES TO THE FORMER FLA. DEP'TS OF LAB. & EMP. SEC., Interim Rep. 2011-107, at 1 (Oct. 2010), <https://www.flsenate.gov/UserContent/Session/2011/Publications/InterimReports/pdf/2011-107cm.pdf> [<https://perma.cc/5E74-8YKP>].

84. *Id.*

85. OPPAGA, SPECIAL REVIEW: COSTS OF THE DEPARTMENT OF LABOR AND EMPLOYMENT SECURITY'S WORKFORCE DEVELOPMENT PROGRAMS, Rep. 99-28, at 9-10 (Jan. 2000). Expenditures for "protection in the areas of wages, housing and transportation for migrant and seasonal agricultural workers" was the category with the second lowest funding within DLES's labor programs in the fiscal year of 1998 to 1999 at \$300,000. *Id.* at 10. Millions of dollars were spent on workforce development, including job placement, training, and unemployment services. *Id.* at 2.

86. FLA. COMM. ON COM., *supra* note 83, at 2.

87. Spencer Woodman, *Remember How Jeb Bush Dismantled Florida's Department of Labor?*, IN THESE TIMES (Feb. 19, 2016), <https://inthesetimes.com/article/how-jeb-bush-dismantled-floridas-labor-department> [<https://perma.cc/BB66-UFW3>].

88. *Welfare Reform and State Flexibility*, BROOKINGS INST., <https://www.brookings.edu/events/welfare-reform-and-state-flexibility/> [<https://perma.cc/PN4W-P7C7>] (last visited Sept. 17, 2022).

89. U.S. GOV'T ACCOUNTABILITY OFF., GAO/HEHS-98-109, WELFARE REFORM: STATES ARE RESTRUCTURING PROGRAMS TO REDUCE WELFARE DEPENDENCE *passim* (June 1998), <https://www.gao.gov/assets/hehs-98-109.pdf> [<https://perma.cc/9MAB-XLHT>].

public management (NPM) focuses on cost reduction, performance measurement, and outcome budgeting.<sup>90</sup> NPM also emphasizes decentralizing government-run programs to the private sector for efficiency and flexibility.<sup>91</sup> “Doing more with less” was the central message of the NPM movement.<sup>92</sup>

Embracing these trends, Florida passed the Government Performance and Accountability Act in 1994 and increasingly shifted state-run services to corporate boards or subcontracted them to private entities altogether.<sup>93</sup> In 1999, the year Governor Jeb Bush assumed office, the Florida Legislature initiated the abolition of DLES<sup>94</sup> and directed the Office of Program Policy Analysis and Government Accountability to identify workforce development divisions and programs that could be “eliminated, consolidated, or privatized.”<sup>95</sup> Given the continued weakening of DLES’s role since the mid-1990s, it was all but a formality when the legislature finally abolished DLES in its entirety during the 2002 session.<sup>96</sup> The NPM creed is reflected in a veto letter from Governor Jeb Bush concerning the state budget in fiscal year 2002 to 2003:

Abolishment of Department of Labor and Employment Security: Since taking office, an important goal of the administration has been the achievement of efficient, limited government that serves Florida’s taxpayers well . . . .

Over the last three years, no agency has embodied this positive change more than the Department of Labor and Employment Security . . . . resulting in the streamlining and transference of many programs to other agencies, saving taxpayers a total of \$86.5 million.<sup>97</sup>

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90. Lawrence L. Martin, *Budgeting for Outcomes in State Human Agencies*, 24 ADMIN. SOC. WORK 71, 86 (2000), [https://doi.org/10.1300/J147v24n03\\_05](https://doi.org/10.1300/J147v24n03_05) [<https://perma.cc/JMW8-EV9C>].

91. Naim Kapucu, *New Public Management: Theory, Ideology, and Practice*, in HANDBOOK OF GLOBALIZATION, GOVERNANCE, & PUB. ADMIN. 886, 889 (Ali Farazmand & Jack Pinkowski eds., 1st ed. 2006).

92. Christopher Hood, *A Public Management for All Seasons?*, 69 PUB. ADMIN. 3, 15 (Mar. 1991).

93. Christopher Botsko et al., *Recent Changes in Florida Welfare and Work, Child Care, and Child Welfare Systems*, THE URB. INST. (July 1, 2001), <http://webarchive.urban.org/publications/310184.html> [<https://perma.cc/NEJ5-MBCF>].

94. FLA. COMM. ON COM., *supra* note 83.

95. OPPAGA, REVIEW OF THE WORKFORCE DEVELOPMENT SYSTEM, Rep. 99-34, at 1 (Feb. 2000), <https://oppaga.fl.gov/Products/ReportDetail?rn=99-34> [<https://perma.cc/YS8X-P9WW>].

96. FLA. COMM. ON COM., *supra* note 83.

97. Letter from Jeb Bush, Fla. Governor, to Katherine Harris, Fla. Sec’y of State (June 5, 2002), <http://floridafiscalportal.state.fl.us/Document.aspx?ID=2864&DocType=PDF> [<https://perma.cc/DFR8-GPYW>].

In the wake of DLES dismantling, child and farm labor enforcement—along with its investigators and subsequent appropriations—were transferred to the Division of Regulation under the Department of Business and Professional Regulation (DBPR), which remains in existence.<sup>98</sup> As of 2022, DBPR maintains sixteen inspectors for functions of the Division of Regulation.<sup>99</sup> DLES’s abolition in and of itself did not affect Florida’s wage enforcement capacity—it simply passed the torch of state wage enforcement for some workers to DBPR. Some of DLES’s responsibilities were transferred to WAGES coalitions and the Agency for Workforce Innovation,<sup>100</sup> which was combined into the Department of Economic Opportunity in 2011.<sup>101</sup> Adopting a mechanism to protect and enforce wage and hour laws for all workers, beyond the limited subset of child and farm workers, was not considered at the time. This resulted in reinscribing a system in which employers could commit wage theft without state interference.<sup>102</sup> Even if this was an unintentional goal of DLES’s restructuring, it is what happened in practice.

#### IV. FLORIDA’S MINIMUM WAGE ENFORCEMENT AFTER THE DISMANTLING OF THE DEPARTMENT OF LABOR AND EMPLOYMENT SECURITY

Before 2004, Florida did not have a state minimum wage, so the federal government carried out minimum wage enforcement.<sup>103</sup> In 2005, when Florida’s minimum wage went into effect, Florida gained authority to enforce the new statewide wage protections.<sup>104</sup> Yet without DLES or a similar department of labor to carry out administrative enforcement for all Floridian workers, Florida was not well-positioned to take up these new duties. Supporters of Amendment 5 attempted to address this enforcement gap. Included in Amendment 5’s ballot language was a

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98. *Child Labor*, FLA. DEP’T OF BUS. & PRO. REGUL., <http://www.myfloridalicense.com/DBPR/child-labor/> [https://perma.cc/TMP5-ZJ8P] (last visited Sept. 21, 2022); *Farm Labor*, FLA. DEP’T OF BUS. & PRO. REGUL., <http://www.myfloridalicense.com/DBPR/farm-labor/> [https://perma.cc/U3CT-FCS2] (last visited Sept. 21, 2022).

99. *Inspection Program*, FLA. DEP’T OF BUS. & PRO. REGUL., <http://www.myflorida.com/DBPR/division-of-regulation/inspection-program/> [https://perma.cc/3AWC-SU3D] (last visited Sept. 9, 2022).

100. Botsko et al., *supra* note 93.

101. *Florida Director of Agency for Workforce Innovation*, BALLOTEDIA, [https://ballotpedia.org/Florida\\_Director\\_of\\_Agency\\_for\\_Workforce\\_Innovation](https://ballotpedia.org/Florida_Director_of_Agency_for_Workforce_Innovation) [https://perma.cc/F7ZW-F7RB] (last visited Sept. 21, 2022).

102. WORKFORCE FLA., EMPLOYER-SPONSORED BENEFITS STUDY TASK FORCE FINAL REPORT 1, 15 (Jan. 15, 2014), <https://careersourceflorida.com/wp-content/uploads/2014/01/TaskForceBenefitsStudyFinalReport.pdf> [https://perma.cc/CJ4V-8BXR].

103. FLA. STAT. § 448.110(3) (2022).

104. *Id.*

provision that the Florida Attorney General “or other official designated by the state legislature” may enforce the minimum wage by bringing a lawsuit on behalf of the state.<sup>105</sup> This language provided the legislature with discretion to delegate enforcement authority to an existing administrative agency, like DBPR, or create a new agency and authorize its director to enforce the minimum wage. However, after Amendment 5’s passage, the Florida Legislature enacted a statute that only permitted the Florida Attorney General to bring a civil action for enforcement.<sup>106</sup> Thus, the State Attorney General’s Office became the sole avenue for the public enforcement of Florida’s minimum wage.<sup>107</sup>

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105. *Florida Minimum Wage, Amendment 5 (2004)*, *supra* note 28; FLA. CONST. art. X, § 24. Notably, Amendment 5 also included a private right of action creating a pathway for workers to sue employers who failed to pay them minimum wage. *Florida Minimum Wage, Amendment 5 (2004)*, *supra* note 28. While private rights of action provide workers with a mechanism to enforce their rights where the government cannot or will not act, private enforcement alone is inadequate, especially for low-wage workers who are most vulnerable to wage theft. Administrative agencies can and should take steps to address this hurdle by protecting the identity of complainants, initiating investigations proactively, and resolving violations for all aggrieved workers. Further, as minimum wage violations tend to impact multiple workers, agencies are better suited to achieve justice for all workers whose rights have been violated, not just those who feel comfortable coming forward. Additionally, unlike a civil suit, enforcement through an administrative agency is free and administrative enforcement processes are set up such that workers are not expected to be represented by attorneys. This is important because, with the exception of legal nonprofits, many attorneys are uninterested in representing low-wage workers in minimum wage lawsuits as the recovery is relatively small. Similarly, where workers are precluded from filing a civil action because of forced arbitration clauses—a trend that the Center for Popular Democracy and the Economic Policy Institute estimates will cover 80% of private sector, nonunion workers by 2024—public enforcement may be the only means available to workers to address minimum wage violations. *See* HAMAJI ET AL., *supra* note 78, at 1, 4, 11, 21.

106. FLA. STAT. § 448.110(7) (2022). In addition to failing to designate an administrative agency to enforce Florida’s minimum wage, Florida lawmakers blunted workers’ right to enforce the minimum wage through a civil suit. Senate Bill 18B included a provision requiring that before an aggrieved person can file a civil action to enforce the minimum wage, they must first notify their employer in writing of their intent to initiate such an action and include the dates and hours for which payment is sought and the total amount of alleged unpaid wages. *See* S.B. 18B, 2005 Leg., Spec. Sess. B (Fla. 2005). Notably, despite employers’ obligations to maintain payroll records under federal law, Florida’s requirement to give the employer written notice prior to filing a civil action shifts the obligation of recordkeeping to the worker. *See* 29 U.S.C. § 211(c). Thus, the procedural burdens created by Senate Bill 18B combined with the fear of retaliation that prevents many workers from reporting minimum wage violations almost certainly discourages some low-wage workers from filing minimum wage lawsuits. For a discussion of asymmetries of power and retaliation keeping workers from complaining, *see* Janice Fine, *Solving the Problem from Hell: Tripartism as a Strategy for Addressing Labour Standards Non-Compliance in the United States*, 50 OSGOODE HALL L. J. 813, 815 (2013).

107. FLA. STAT. § 448.110(7) (2022). The WHD can conduct some state minimum wage enforcement. Though WHD has local offices in Florida, WHD is unable to recover more than \$7.25 per hour for minimum wage violations. *Minimum Wage*, U.S. DEP’T OF LAB., <https://www.dol.gov/agencies/whd/minimum-wage> [<https://perma.cc/L97X-VCQ5>] (last visited Sept. 21, 2022). However, WHD does use the state minimum wage rate when it is higher than the

In the years since Amendment 5 was passed and enforcement authority has resided exclusively with the Attorney General's Office, Florida has had four different attorneys general.<sup>108</sup> None seem to have mitigated the rampant wage theft in Florida.<sup>109</sup> From 2016 to 2019, the Florida Attorney General's Office received a total of twenty-nine complaints.<sup>110</sup> In New York State, by contrast, 6,000 complaints were filed in 2014 alone.<sup>111</sup> In Washington—which has a population size that is roughly one-third of Florida's—6,600 wage complaints were filed with the Washington State Department of Labor and Industries in 2019.<sup>112</sup>

Equally troubling is that the Florida Attorney General's Office has failed to meaningfully address any minimum wage complaint for as long as Florida has had a state minimum wage. Legal analysis from 2004 to

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federal minimum to calculate back wages. *Wages and the Fair Labor Standards Act*, U.S. DEP'T OF LAB., <https://www.dol.gov/agencies/whd/flsa> [<https://perma.cc/77Y5-WBF8>] (last visited Sept. 21, 2022). Thus, where back pay is involved, WHD can complement state minimum wage enforcement. *Id.* Wage and hour enforcement by attorneys general have proven effective in some jurisdictions that have dedicated workers' rights units within their attorneys general offices, such as California, Illinois, Massachusetts, Michigan, Minnesota, New Jersey, New York, Pennsylvania, and the District of Columbia. See TERRI GERSTEIN, ECON. POL'Y INST., WORKERS' RIGHTS PROTECTION AND ENFORCEMENT BY STATE ATTORNEYS GENERAL 4 (Aug. 27, 2020), <https://www.epi.org/publication/state-ag-labor-rights-activities-2018-to-2020/> [<https://perma.cc/Z82M-XSM2>]. Florida's Office of the Attorney General, however, does not have a worker's rights unit. Moreover, all jurisdictions with attorneys general who are active in enforcing wage protections (excluding Massachusetts) also have state departments of labor. *E.g.*, N.Y. DEP'T OF LAB., <https://dol.ny.gov/> [<https://perma.cc/44RC-GTX3>] (last visited Sept. 21, 2022). Thus, the Office of Attorney General in each of those states provides enforcement resources that supplement the administrative agency's—a significant distinction from Florida's framework in which the attorney general is the sole avenue available for state minimum wage enforcement. FLA. STAT. § 448.110(7) (2022).

108. *Florida Former Attorneys General*, NAT'L ASS'N OF ATT'YS GEN., <https://www.naag.org/attorneys-general/past-attorneys-general/florida-former-attorneys-general/> [<https://perma.cc/ARK7-JRHZ>] (last visited Sept. 21, 2022). From 2004 to 2019, Florida's former attorneys general were Charlie Crist, Bill McCollum, and Pam Bondi. *Id.* The current attorney general is Ashley Moody. *Attorney General Ashley Moody*, FLA. OFF. OF ATT'Y GEN., <http://www.myfloridalegal.com/pages.nsf/Main/1515CE372E59D1E885256CC60071B1C4> [<https://perma.cc/H2KX-M3AU>] (last visited Sept. 21, 2022).

109. Email from Off. of the Att'y Gen. of Fla., to authors (Jan. 11, 2021) (on file with authors); HERNANDEZ & STEPICK, *supra* note 7, at 7; *e.g.*, Michael Auslen, *Florida Democratic Lawmakers Demand Stronger Minimum Wage Enforcement by Pam Bondi*, BRADENTON HERALD (Sept. 17, 2015, 7:26 AM), <https://bit.ly/3bAU8bi>.

110. Email from Off. of the Att'y Gen. of Fla., *supra* note 109.

111. REBECCA MILLER ET AL., MAKE THE ROAD N.Y., CTR. FOR POPULAR DEMOCRACY, COMING UP SHORT: THE STATE OF WAGE THEFT ENFORCEMENT IN NEW YORK 11 (Apr. 2019), [https://maketheroadny.org/wp-content/uploads/2019/04/Coming-Up-Short\\_-The-State-of-Wage-Theft-Enforcement-in-NY-4\\_8\\_19.pdf](https://maketheroadny.org/wp-content/uploads/2019/04/Coming-Up-Short_-The-State-of-Wage-Theft-Enforcement-in-NY-4_8_19.pdf) [<https://perma.cc/N5YT-KEKJ>].

112. WASH. STATE DEP'T LAB. & INDUS., WAGE, CHILD LABOR AND PROTECTED LEAVE INVESTIGATIONS 6 (Dec. 2019), [https://www.lni.wa.gov/agency/\\_docs/2019WageChildLaborProtectedLeaveReport.pdf](https://www.lni.wa.gov/agency/_docs/2019WageChildLaborProtectedLeaveReport.pdf) [<https://perma.cc/VQ3P-Z6EN>].

2011<sup>113</sup> and investigative reporting from 2011 to 2016<sup>114</sup> collectively show that from 2004—the year Floridians first designated a state minimum wage—to 2016, the state failed to file a single civil action to enforce Florida workers’ constitutional right to a minimum wage.<sup>115</sup> Likewise, between 2016 and 2019, records demonstrate the Attorney General’s Office took no formal enforcement actions and recovered no money, even for the scant number of Floridians who filed wage complaints during those four years.<sup>116</sup>

Amid this weak state enforcement climate, some localities, starting with Miami-Dade County, passed their own wage theft ordinances that created local processes for recovering stolen wages.<sup>117</sup> In response, state Republicans have repeatedly introduced bills to preempt localities’ ability to do so.<sup>118</sup> While bills like these have yet to pass in Florida, the message conveyed is that protecting workers’ constitutional right to the minimum wage is not a statewide priority.

#### V. THE INEQUITABLE IMPACT OF UNCHECKED WAGE THEFT

To understand the extent of wage theft throughout Florida, the Authors assessed minimum wage violation rates from 2000 to 2019. This allowed for comparing rates before and after the passage of Amendment 5 (in effect May 2005) and before the passage of Amendment 2 (in effect September 2021). Between 2000 and the end of April 2005, the minimum

113. HERNANDEZ & STEPICK, *supra* note 7.

114. Levine, *supra* note 8.

115. See Levine, *supra* note 8 (“Florida . . . did not perform any enforcement action from late 2011 through early 2016, according to records obtained by the publication *In These Times* and reviewed by POLITICO.”); see also HERNANDEZ & STEPICK, *supra* note 7, at 7 (“As of December 2011, the Florida Attorney General had not brought one single civil action to enforce the state’s minimum wage law.”).

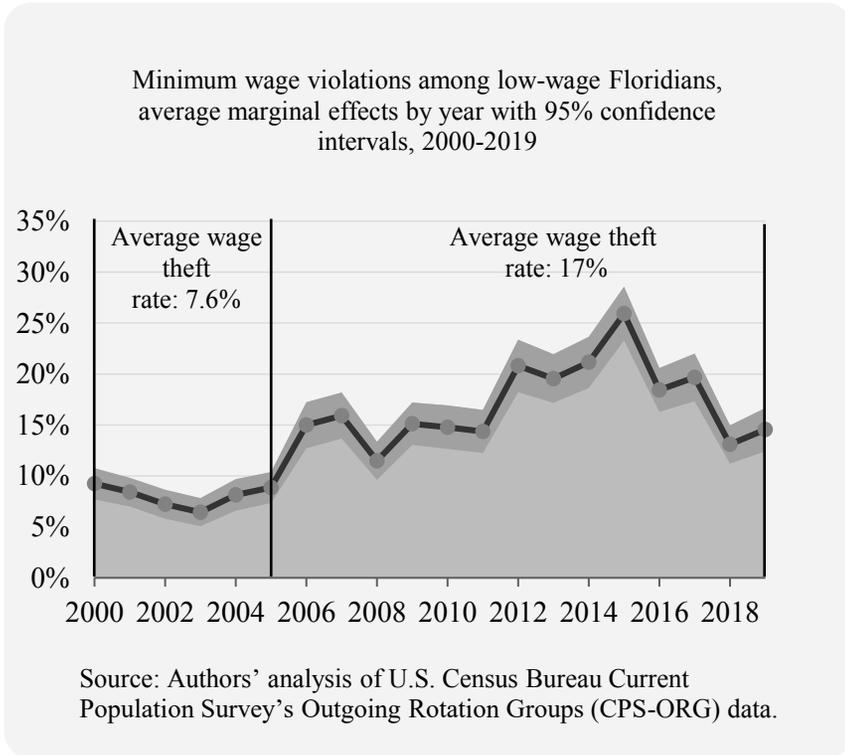
116. Email from Off. of the Att’y Gen. of Fla., *supra* note 109. The records include one email from an employer indicating that the employer increased hourly rates to meet minimum wage requirements. There is no indication that the employer was asked if they paid back wages. Further, the employer provided no documentation or other proof to confirm they had in fact come into compliance with the minimum wage. *Id.*

117. Munzenrieder, *supra* note 49; Kam, *supra* note 52.

118. Bills in six sessions attempted to preempt local wage theft ordinances and other labor regulations, all sponsored by Republican legislators. See S.B. 862, 2012 Leg., Reg. Sess. (Fla. 2012), <https://www.flsenate.gov/Session/Bill/2012/862> [<https://perma.cc/S9EK-MDBC>]; S.B. 1216, 2013 Leg., Reg. Sess. (Fla. 2013), <https://www.flsenate.gov/Session/Bill/2013/1216/> [<https://perma.cc/L6SW-X7T4>]; S.B. 926, 2014 Leg., Reg. Sess. (Fla. 2014), <https://www.flsenate.gov/Session/Bill/2014/926/> [<https://perma.cc/J7MF-U5NK>]; S.B. 1158, 2017 Leg., Reg. Sess. (Fla. 2017), <https://www.flsenate.gov/Session/Bill/2017/1158> [<https://perma.cc/STG7-XA6S>]; H.B. 17, 2017 Leg., Reg. Sess. (Fla. 2017), <https://www.flsenate.gov/Session/Bill/2017/17> [<https://perma.cc/L7KC-QUINT>]; S.B. 432, 2019 Leg., Reg. Sess. (Fla. 2019), <https://www.flsenate.gov/Session/Bill/2019/432> [<https://perma.cc/QA6R-NXVG>]; S.B. 1126, 2020 Leg., Reg. Sess. (Fla. 2020), <https://www.flsenate.gov/Session/Bill/2020/1126> [<https://perma.cc/9UZ7-6VDE>].

wage violation rate among Floridians earning low wages—those with incomes in the bottom 20%—averaged 7.6%.<sup>119</sup> As Florida’s minimum wage increased and the state made no effort to enforce workers’ rights, wage theft rates rose dramatically.

Figure 2: Florida’s Wage Theft Rate More Than Doubled After Minimum Wage Boost in 2005<sup>120</sup>



By the fourth quarter of 2005, minimum wage violations had nearly doubled to 13.9%.<sup>121</sup> The same time the following year, violations reached 17%.<sup>122</sup> Minimum wage violations hovered around 15% for several years thereafter before climbing back up again to peak at 26% in 2015—more than three times the violation rate of the early 2000s.<sup>123</sup> Though the minimum wage violation rate settled back down to 14.6% in 2019, this rate is still almost double the rate fifteen years prior.<sup>124</sup>

119. TSOUKALAS ET AL., *supra* note 1, at 4; *see infra* Figure 2.

120. TSOUKALAS ET AL., *supra* note 1, at 4.

121. *See supra* Figure 2.

122. *See supra* Figure 2.

123. *See supra* Figure 2.

124. *See supra* Figure 2.

All told, after the minimum wage increase in May 2005, about 17% of low-wage workers in Florida—or about 250,000 Floridians per year on average—were paid less than the minimum wage they were entitled to by law.<sup>125</sup> As a result, working Floridians lost an average of \$1.32 per hour between 2005 and 2019, nearly a 20% cut in the minimum wage to which they were entitled.<sup>126</sup> Notably, this average figure does not account for any lost income above the minimum wage that workers may have been promised or otherwise owed, so the extent of wage theft these workers experienced could have been even more significant. Again, according to the Florida Attorney General's records, none of these wage theft cases were pursued.<sup>127</sup> Moreover, the Authors' minimum wage violation rate estimates are conservative, so the figures likely underestimate the true prevalence of wage theft.

To ascertain industry-specific minimum wage violation rates, the Authors investigated the top industries to experience wage theft—from the time Amendment 5 took effect in 2005 to the present day.<sup>128</sup> Figure 3 displays violation rates for the ten industries with the highest violation rates.<sup>129</sup> Importantly, five of the top six industries are pivotal to Florida's economy, with service industries (such as food, drinking, and laundry services) being significant drivers of Florida's \$75 billion-dollar tourism economy.<sup>130</sup>

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125. See *supra* Figure 2.

126. See *supra* Figure 2.

127. Email from Off. of the Att'y Gen. of Fla., *supra* note 109.

128. TSOUKALAS ET AL., *supra* note 1, at 5; see *infra* Figure 3.

129. TSOUKALAS ET AL., *supra* note 1, at 5.

130. Alexis P. Tsoukalas, *Florida Workers Make Tourism the State's Top Industry, But Companies Refuse to Share the Prosperity*, FLA. POL'Y INST. (Dec. 20, 2019), <https://bit.ly/3hQ44zI> [<https://perma.cc/NDE6-H27A>]; John Jordan, *Growth on the Menu for Florida's Restaurant Sector*, GLOBEST (Aug. 29, 2019), <https://www.globest.com/2019/08/29/growth-on-the-menu-for-floridas-restaurant-sector/?slreturn=20220207204957> [<https://perma.cc/LN4T-TSQ5>]; Eileen Patten, *Racial, Gender Wage Gaps Persist in U.S., Despite Some Progress*, PEW RSCH. CTR. (July 1, 2016), <https://pewrsr.ch/34QjJeF> [<https://perma.cc/UAR9-LYQ5>]; see *infra* Figure 3.

Figure 3: Top 10 Highest Violation Industries in Florida (2005-2019), with Notable Occupations Included<sup>131</sup>

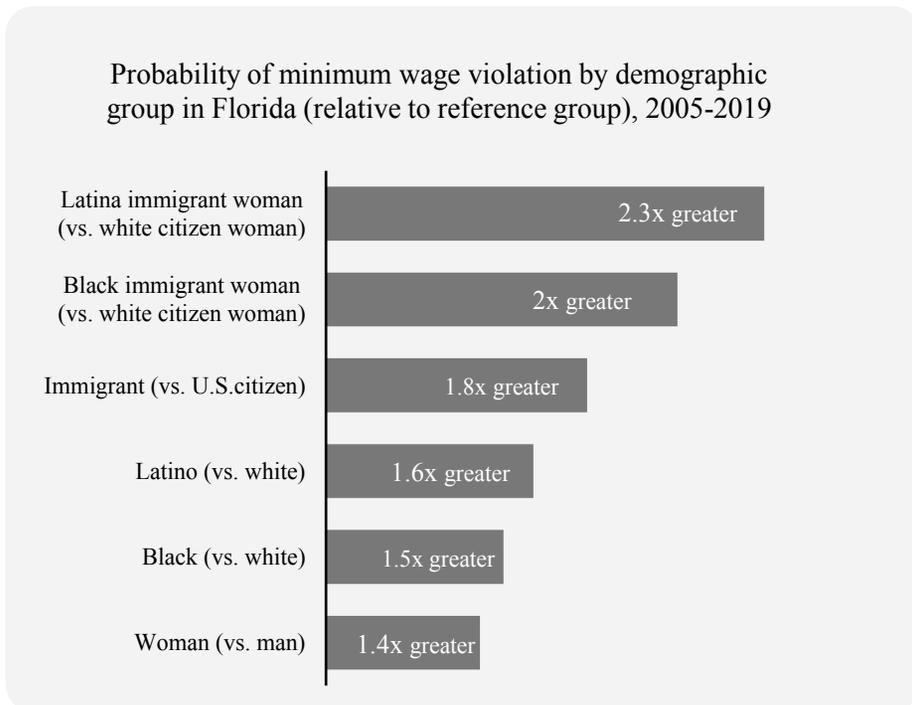
|   | <b>Industry</b><br><i>Occupation with Highest Wage Theft</i>   | <b>Minimum Wage Violation Rate</b> | <b>Number of Workers Underpaid Per Year</b> | <b>Average Hourly Wage Theft</b> |
|---|--|------------------------------------|---|----------------------------------|
|    | <b>Personal and laundry services</b><br><i>31% were hairdressers, hairstylists, and cosmetologists</i>       | 28%                                | 12,999                                      | \$1.36                           |
|    | <b>Membership association and organizations</b><br><i>21% were secretaries and administrative assistants</i> | 24%                                | 4,184                                       | \$1.51                           |
|    | <b>Agriculture</b><br><i>75% were miscellaneous agricultural workers (e.g., farmworkers)</i>                 | 24%                                | 3,900                                       | \$1.22                           |
|    | <b>Real estate</b><br><i>50% were real estate brokers and sales agents</i>                                   | 23%                                | 6,334                                       | \$1.63                           |
|    | <b>Private households</b><br><i>76% were maids and housekeepers</i>  | 23%                                | 5,206                                       | \$1.39                           |
|   | <b>Food services and drinking places</b><br><i>36% were waiters and waitresses</i>                           | 22%                                | 59,583                                      | \$1.36                           |
|  | <b>Repair and maintenance</b><br><i>22% were automotive service technicians and mechanics</i>                | 20%                                | 3,869                                       | \$1.66                           |
|  | <b>Transportation and warehousing</b><br><i>26% were driver/sales workers and truck drivers</i>              | 20%                                | 10,529                                      | \$1.42                           |
|  | <b>Social assistance</b><br><i>41% are child care workers</i>  | 19%                                | 4,785                                       | \$1.07                           |
|  | <b>Wholesale trade</b><br><i>31% were sales representatives, wholesale and manufacturing</i>                 | 19%                                | 5,604                                       | \$1.06                           |

The occupational percentages within each industry represent the share that occupation contributes to the industry’s total rate of wage theft. For example, among those who experienced wage theft in personal and laundry services, 31% are hairdressers, hairstylists, and cosmetologists.

131. TSOUKALAS ET AL., *supra* note 1, at 5.

The Authors were also determined to identify whether wage theft occurred similarly across demographic groups. Deep inequities were discovered. From 2005 to 2019, the probability of experiencing wage theft in Florida was 1.4 times greater for a woman than a man, 1.5 times greater for Black workers than white workers, 1.6 times greater for Latinx workers than white workers, and 1.8 times greater for immigrants than U.S. citizens.<sup>132</sup> Black and Latina immigrant women were 2 and 2.3 times more likely than white women born in the United States to experience wage theft, respectively.<sup>133</sup>

Figure 4: Immigrants, People of Color, and Women Are More Likely to Experience Wage Theft in Florida<sup>134</sup>



Unsurprisingly, people of color, women, and many immigrants are more likely than their peers to experience wage theft,<sup>135</sup> as these are the same groups who are overrepresented in low-wage work. Substantial pay inequities persist today, positioning white workers at the top of the pay

132. TSOUKALAS ET AL., *supra* note 1, at 6; *see infra* Figure 4.

133. TSOUKALAS ET AL., *supra* note 1, at 6; *see infra* Figure 4.

134. TSOUKALAS ET AL., *supra* note 1, at 6. “Immigrant” refers to any Floridian born outside the United States who is not a naturalized U.S. citizen such as a refugee, asylee, undocumented immigrant, legal permanent resident.

135. *See supra* Figure 4.

scale while relegating workers of color to the bottom.<sup>136</sup> This remains true even when education, experience, and occupation are accounted for.<sup>137</sup> Florida's \$15 wage could narrow these pay inequities in the future, especially among women of color.<sup>138</sup> If wage theft among these groups persists, however, this benefit is unlikely to be realized.

## VI. WAGE THEFT HURTS THE ECONOMY

While working people suffer the most from wage theft, it is also important to note how wage theft damages the economy. The State of Florida's failure to take a single minimum wage enforcement action against an employer since 2004<sup>139</sup> demonstrates the urgent need for an agency whose mission is to ensure a fair day's pay for Floridians and limit non-compliant firms' ability to undercut law-abiding employers.

Furthermore, by design, minimum wage policies benefit people with low incomes, and economic studies show that low-wage workers are much more likely to spend their increased pay (especially locally) than their higher-earning peers are.<sup>140</sup> This remains true even as businesses moderately increase prices to account for increased labor costs.<sup>141</sup> In 2021, economists explored the impact of the federal government's first round of \$600 stimulus checks distributed to most Americans during the COVID-19 pandemic.<sup>142</sup> They found that households with an annual income under \$46,000 dramatically increased spending in the month following receipt of the stimulus.<sup>143</sup> By contrast, households with a yearly income above \$78,000 only minimally raised their spending.<sup>144</sup>

Finally, the Authors found that Florida's budget could suffer if wage theft persists.<sup>145</sup> Sales tax revenue resulting from higher wages has unique relevance to Florida. The state lacks a personal income tax and over 75%

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136. Patten, *supra* note 130.

137. *Id.*

138. TSOUKALAS, *supra* note 2, at 5.

139. Levine, *supra* note 8; HERNANDEZ & STEPICK, *supra* note 7, at 7.

140. Daniel Cooper et al., *The Local Aggregate Effects of Minimum Wage Increases 2* (Nat'l Bureau of Econ. Rsch., Working Paper No. 25761, Apr. 2019), <https://bit.ly/3pTi6DC> [<https://perma.cc/55V5-JTKQ>].

141. ELISA MINOFF ET AL., GEO. L. CTR. ON POVERTY & INEQ., LEADERSHIP CONF. EDUC. FUND, BARE MINIMUM: WHY WE NEED TO RAISE WAGES FOR AMERICA'S LOWEST-PAID FAMILIES (Apr. 2018), <https://bit.ly/32LbH43> [<https://perma.cc/FLD7-9RAV>].

142. RAJ CHETTY ET AL., OPPORTUNITY INSIGHTS, EFFECTS OF JANUARY 2021 STIMULUS PAYMENTS ON CONSUMER SPENDING (Feb. 4, 2021), [https://opportunityinsights.org/wp-content/uploads/2021/01/Oi\\_Secondstimulus\\_analysis.pdf](https://opportunityinsights.org/wp-content/uploads/2021/01/Oi_Secondstimulus_analysis.pdf) [<https://perma.cc/22RM-F6DM>].

143. *Id.*

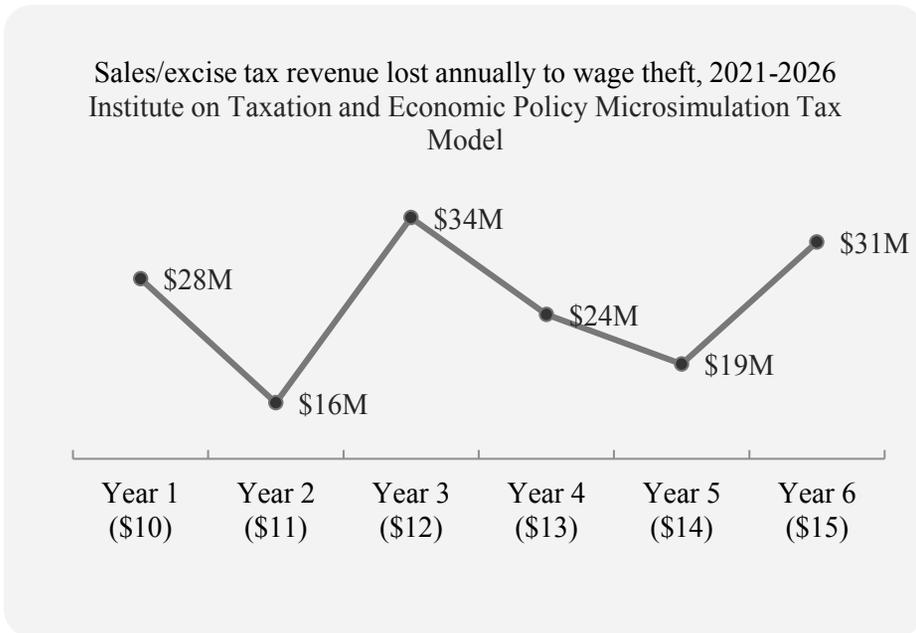
144. Elizabeth Schulze, *A 3rd Stimulus Check Could Be Coming. Here's What Americans Did with the Others*, ABC NEWS (Feb. 24, 2021, 8:54 PM), <https://abcnews.go.com/Politics/3rd-stimulus-check-coming-heres-americans/story?id=76094910> [<https://perma.cc/GV8K-Y7Y8>].

145. TSOUKALAS ET AL., *supra* note 1, at 8; *see infra* Figure 5.

of its general revenue fund comprises of sales tax revenue.<sup>146</sup> General revenue supports critical public areas like education and health and human services.<sup>147</sup> The increased spending Florida can expect from Amendment 2 will pump revenue back into local businesses and the state overall, as sales tax is collected on residents’ purchases.<sup>148</sup> Conversely, the Authors determined that if current wage theft trends persist, Florida stands to lose \$152 million in sales tax revenue by 2026,<sup>149</sup> once the \$15 minimum wage is fully phased in. This equates to \$25.3 million, on average, in lost sales tax revenue per year.<sup>150</sup>

VII. A DEPARTMENT OF LABOR THAT WILL ENFORCE THE MINIMUM WAGE

Figure 5: Florida Could Lose Millions in Sales Tax Revenue Each Year During Minimum Wage Phase-in If Wage Theft Persists<sup>151</sup>



146. Florida Policy Institute: Florida Policymakers Need to Reassess How the Minimum Wage Is Enforced, INST. ON TAX’N & ECON. POL’Y (Mar. 4, 2021), <https://itep.org/florida-policy-institute-florida-policymakers-need-to-reassess-how-the-minimum-wage-is-enforced/> [https://perma.cc/RP5R-DB3H].

147. FLA. LEGISLATURE, FISCAL ANALYSIS IN BRIEF: 2020 LEGISLATIVE SESSION 2, 5 (Sept. 2020), <http://edr.state.fl.us/Content/revenues/reports/fiscal-analysis-in-brief/FiscalAnalysisinBrief2020.pdf> [https://perma.cc/7SJD-Z8DR].

148. Florida Policy Institute, *supra* note 146.

149. TSOUKALAS ET AL., *supra* note 1, at 8; *see infra* Figure 5.

150. TSOUKALAS ET AL., *supra* note 1, at 8; *see infra* Figure 5.

151. TSOUKALAS ET AL., *supra* note 1, at 8.

As demonstrated by the failure of Florida's Attorneys General to initiate a single enforcement action since 2004,<sup>152</sup> Florida workers need an alternative public enforcement mechanism. By re-establishing a state department of labor that engages in robust minimum wage enforcement, providing it with adequate funding and staffing,<sup>153</sup> and arming it with the core powers necessary for effective enforcement of wage and hour laws, Floridian workers stand to finally realize the promise of the constitutional right to the minimum wage. The following powers will be instrumental to the agency's effectiveness:

***Developing and overseeing mechanisms through which workers can make complaints.*** People and organizations must have a well-publicized, accessible avenue to report suspected violations, and the department must make every effort to keep the complainant's identity confidential.<sup>154</sup>

***Protecting workers against retaliation and adverse action.*** The department must be empowered to remedy situations where an employer interferes with, restrains, or takes an adverse action against employees exercising any right protected by Article X, Section 24, of the Florida Constitution. It also must be authorized to provide appropriate relief, including reinstatement, front pay reinstatement with full payment of unpaid wages plus interest, liquidated damages totaling up to twice the unpaid wages, and other appropriate compensatory damages.

***Requiring record-keeping.*** Employers must be required under state law to create and retain adequate records documenting compliance with wage and hour laws, including minimum wages paid to each employee.<sup>155</sup>

***Conducting investigations and obtaining evidence and injunctions.*** The department must have the authority to enter and inspect all places of business or employment; review and make copies of papers, books, accounts, records, payrolls, and documents; question witnesses in private; administer oaths; and petition for an injunction from a trial court for appropriate injunctive relief.

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152. Levine, *supra* note 8; HERNANDEZ & STEPICK, *supra* note 7, at 7.

153. See REBECCA MILLER ET AL., *supra* note 111 (making the same arguments for the state of New York).

154. Florida currently has a hotline to report general complaints to the Attorney General's Office (866-9NO-SCAM), but very few people know about it, and it is not featured prominently on any Attorney General communications. See *File a Complaint*, FLA. OFF. OF ATT'Y GEN., <http://www.myfloridalegal.com/pages.nsf/Main/E3EB45228E9229DD85257B05006E32EC> [<https://perma.cc/GR3S-QKXC>] (last visited Sept. 21, 2022).

155. Currently, employers are not required by Florida law to keep records related to minimum wage. The Fair Labor Standards Act does require that employers subject to the Act maintain payroll records, but only for three years. See 29 C.F.R. § 516.5(a) (2022). Florida's minimum wage provides a four-year statute of limitations, except for willful violations, which have a five-year statute of limitation. FLA. CONST. art. X, § 24(e). Florida thus needs state recordkeeping requirements that oblige employers to maintain payroll records for five years. This will help ensure that evidence is preserved such that the department is able to adequately investigate and enforce the state's minimum wage protections.

*Assessing damages, fines, and penalties.* This includes the administrative power to require full payment of unpaid wages plus interest, liquidated damages payable to each aggrieved person, and other legal and equitable relief. The department must also be authorized to collect wages, damages, and other monetary remedies due, seek injunctions, and recover fines payable to the state.

During the 2021 and 2022 legislative sessions, bills were introduced in the Florida Congress to re-establish a department of labor that includes the full enforcement powers described here, but both bills died in committee.<sup>156</sup>

### CONCLUSION

The first phase of Amendment 2, which voters of all parties overwhelmingly favored, has been implemented.<sup>157</sup> An estimated 646,000 Floridians stood to benefit from the first phase—increasing the minimum wage to ten dollars per hour—in 2021 alone.<sup>158</sup> More than one in four Floridian workers stand to see a direct pay increase under Amendment 2 when it is fully implemented.<sup>159</sup> All working Floridians deserve effective minimum wage enforcement, including those slated for pay boosts under Amendment 2. Without enforcement, the minimum wage increase will be effectively denied to many workers, predominantly immigrants, people of color, and women—those who are most vulnerable to wage theft.<sup>160</sup> Enforcement is the unfinished business of Florida’s groundbreaking constitutional amendment.

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156. S.B. 1726, 2021 Leg., Reg. Sess. (Fla. 2021), <https://www.flsenate.gov/Session/Bill/2021/1726> [<https://perma.cc/6BK4-PGCN>]; S.B. 1756, 2022 Leg., Reg. Sess. (Fla. 2022), <https://www.flsenate.gov/Session/Bill/2022/1756> [<https://perma.cc/F6SB-CK5V>].

157. Juliana Kaplan & Madison Hoff, *Florida’s Minimum Wage Just Went Up. This Map Shows the Last Time Other States Raised Their Wages*, INSIDER (Sept. 30, 2021, 10:01 AM), <https://www.businessinsider.com/map-the-last-time-each-state-raised-its-minimum-wage-2021-2> [<https://perma.cc/6F7D-GJJT>]; FLA. CONST. art. X, § 24.

158. *Id.*

159. TSOUKALAS, *supra* note 2.

160. *Id.* at 5–6.